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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 1265

JAMES McGUIRE, as President and JOSEPH DIOVI-SALVO, as Secretary-Treasurer of COAL, GASOLINE, FUEL OIL TEAMSTERS, CHAUFFEURS, OIL BURNER INSTALLATION MAINTENANCE, SERVICEMEN AND HELPERS OF NEW YORK CITY AND VICINITY, NASSAU AND SUFFOLK COUNTIES, NEW YORK, N. Y., LOCAL UNION NO. 553, affiliated with the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,

Petitioners,

vs.

HUMBLE OIL & REFINING COMPANY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

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COUNTER-STATEMENT OF THE QUESTION PRESENTED

We regard Petitioners' version of the Questions Presented (Pet., p. 3), and particularly Question No. 1, as a distortion of the facts upon which the case was decided

below. A more appropriate statement of the issue is as follows:

Is an employer which (i) purchases a part of the assets of another concern, (ii) does not assume, and expressly disavows, any obligation under the selling concern's collective bargaining agreements with the union which represented its employees and (iii) employs certain of the selling concern's former employees in a collective bargaining unit covered by an existing agreement with a union representing all the employees in that unit, bound to arbitrate grievances asserted under the agreements between the selling concern and the union which represented its employees?

STATUTES INVOLVED

In addition to the statutes cited in the Petition, we invite the Court's attention to Section 8(d) of the National Labor Relations Act (the Act), 49 Stat. 449 (1935), as amended, 29 U. S. C. §§ 151, *et seq.*

Section 8 (d) of the Act, in relevant part, provides:

> "For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession . . . ."

FACTS*

Petitioners' Statement of the Case (Pet., pp. 5-7) contains only one parenthetical citation to the record. That is not surprising, because Petitioners have in a number of instances made purported statements of fact which have no support in the record. For example, there is no support in the record for Petitioners' assertion that employees were "transferred" from Weber & Quinn to Humble (Pet., p. 6). Similarly, there is no evidence in the record to support Petitioners' assertion that Industrial Employees Association, Inc. (Association), the union recognized by Humble, is a "company union" (*ibid.*). We invite the Court's attention to the following statement of the facts which is supported by the record:

Prior to August 7, 1964, certain employees of Weber & Quinn (a partnership operating a retail coal and fuel oil business in Brooklyn, New York) were covered by collective bargaining agreements between Petitioners' union (Local 553) and Weber & Quinn** (Pet., pp. 2a-3a, 15a, 45a-46a). Those agreements contained arbitration provisions (Pet., pp. 5a, 15a, 41a-42a).

On August 7, 1964, Humble Oil & Refining Company (Humble) purchased from Weber & Quinn its fuel oil accounts and certain other of its fuel oil assets (Pet. pp. 2a, 14a-15a, 45a).

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*A detailed account of the facts is set forth in the District Court opinions dated February 17 and September 30, 1965, the National Labor Relations Board decision dated July 8, 1965, and in the Court of Appeals opinion dated January 31, 1966, all of which may be found in Appendices C, B, D and A, respectively, of the Petition.

**The following citations are to the appendix to the Petition, which appendix contains the decisions of the District Court, the National Labor Relations Board and the Court of Appeals.

Weber & Quinn continued thereafter in the coal business and received payments from Humble for a period of 18 months after the date of purchase (Pet. pp. 2a-4a, 13a, 14a, 46a, 48a).

Humble has for many years been engaged in the fuel oil business in and around New York. In that business it employs approximately 500 employees, some of whom perform work similar to the work formerly performed by the Weber & Quinn employees. Those Humble employees are in a collective bargaining unit which, since 1937, has been represented by the Association (Pet. pp. 3a-4a, 17a, 45a, 53a).

Humble intended to integrate any Weber & Quinn employees whom it employed into its long-established bargaining unit of New York employees (covered by the Association's agreement with Humble dated March 20, 1963) and, therefore, Humble did not assume, and in the purchase agreement expressly disavowed, any obligation under the Weber & Quinn agreements (Pet. pp. 4a-5a, 45a-46a).

After its purchase of Weber & Quinn assets, Humble employed 13 of the 24 former Weber & Quinn employees, and, as planned, immediately integrated them into its existing unit of New York employees (Pet. pp. 4a-5a, 17a, 46a-47a, 53a-54a).

On July 8, 1965, the National Labor Relations Board (Board) ruled that Humble's New York bargaining unit of employees included, specifically, the former Weber & Quinn employees who had been employed by Humble. *Humble Oil & Refining Co.*, 153 N. L. R. B. No. 111 (July 8, 1965).

ARGUMENT

POINT I.

CONSIDERATION OF THIS CASE BY THIS COURT IS UNWARRANTED.

John Wiley & Sons, Inc. v. *Livingston,* 376 U. S. 543, was decided by this Court on March 30, 1964. Since that decision only two Courts of Appeals, other than the Second Circuit in this case, have considered the application of *Wiley* in the context of a purchase of assets by a successor company. *United Steelworkers* v. *Reliance Universal, Inc.,* 335 F. 2d 891 (3d Cir. 1964); *Wackenhut Corp.* v. *United Plant Guard Workers,* 332 F. 2d 954 (9th Cir. 1964). Both Courts of Appeals agreed that a company which purchases an entire existing bargaining unit of another company and continues the operation substantially as before is obligated to arbitrate under contracts between the predecessor company and the union representing a majority of employees in that existing bargaining unit. The Second Circuit cited those cases with approval (Pet. p. 1a).

Neither *Wiley* nor any decided federal court case prior to the instant one has involved the claimed duty of a successor employer to arbitrate under a predecessor's contract where the employees of the predecessor were integrated into a different unit of the successor's employees represented by a different union. "There is no problem of conflict with another union . . . since Wiley had no contract with any union covering the unit of employees which received the former Interscience employees." 376 U. S. at 552, n. 5.

The decision below in the present case does not conflict with either *Wiley* or the post-*Wiley* decisions in other circuits, and review by this Court is therefore unwarranted.

POINT II.

THE DECISION BELOW IS CLEARLY CORRECT AND DOES NOT REQUIRE REVIEW BY THIS COURT.

A. The National Labor Relations Act Precludes Humble From Arbitrating With Local 553.

It has long been clear that under the Act, an employer must bargain exclusively with the union representing its employees and with no other union. *NLRB* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1 (1937).

It is equally clear that the arbitration of grievances is an integral part of collective bargaining as that term is defined in Section 8(d) of the Act. 29 U. S. C. § 158(d); *United Steelworkers* v. *Warrior & Gulf Nav. Co.*, 363 U. S. 574, 578 (1960).

As stated above, the Board has ruled specifically that Humble's New York bargaining unit includes the 13 former Weber & Quinn employees; and that unit is, and at all times material has been, represented by the Association for all purposes of collective bargaining. Because the Association is the representative of the former Weber & Quinn employees, it would be a violation of the Act for Humble to arbitrate (*i.e.*, bargain collectively) with Local 553 with respect to those employees.

The Court should not be misled by Petitioners' suggestion that *Wiley*, when read with *Garment Workers'* v. *NLRB*, 366 U. S. 731 (1961), justifies a departure from the accepted rule that an employer must bargain only with the exclusive bargaining agent of its employees. The *Garment Workers* decision held only that it is an unfair labor practice to recognize as exclusive bargaining agent for the entire unit a union which does not represent the majority of workers in that unit. *Garment Workers* did not dis-

turb the clear holding of this Court in *Consolidated Edison Co.* v. *NLRB,* 305 U. S. 197 (1938), that in the absence of an exclusive bargaining agent a minority of employees in a unit can be represented by any union of their choice, and that an employer can bargain with such union without committing an unfair labor practice. 305 U. S. at 236-37. Thus, while in *Wiley* the Interscience employees might not have constituted an appropriate bargaining unit, no other union was the exclusive bargaining agent for those employees and, therefore, it was not an unfair labor practice for Wiley to bargain with the minority union concerning matters pertaining only to the workers it represented.

Nor should the Court be misled by Petitioners' criticism of the Board of permitting clarification of a unit not previously certified (Pet., pp. 15-16), in a proceeding to which Petitioner was made a party. No claim has ever been made that Humble wrongfully recognized the Association as exclusive bargaining agent or that the Association did not at all relevant times represent a majority of the Humble employees in the unit. Absent such a claim (and proof to support it), there is no occasion to distinguish between a certified and uncertified unit.

B. Humble Has Never Been "Related To" the Weber & Quinn Agreements and, Therefore, Is Not Bound by Their Arbitration Provisions.

"[T]he duty to arbitrate . . . must be founded on a contract" between the parties or one "which is *reasonably related* to the party sought to be obligated." [Emphasis added.] 376 U. S. at 550.

In *Wiley,* one of the two merged companies was party to an agreement to arbitrate with the union; and because *Wiley* involved a statutory merger, neither company was legally able to disavow any of its former obligations, including the obligation to arbitrate. Thus, the party to the

arbitration agreement (which became part of Wiley) remained bound by that agreement, and this Court found that Wiley consequently was "reasonably related" to it.

In the instant case, Humble purchased only certain portions of Weber & Quinn's business—primarily intangibles. Weber & Quinn continued in existence as an entity; in fact, it received payments from Humble for a period of 18 months after the purchase. No division or unit of Weber & Quinn became a part of the Humble operation and, therefore, Humble has never had a relationship to the Weber & Quinn agreements. To the contrary, Humble expressly disavowed any obligation under those agreements, because of the conflict which would arise between those agreements and Humble's existing agreement with the Association covering its New York employees.

C. The Rights of the Former Weber & Quinn Employees Under the Weber & Quinn Agreements Are Fully Protected and, Therefore, There Is No Policy Consideration Requiring Humble to Arbitrate With Local 553.

Local 553 argues in its Petition that if Humble is not required to arbitrate under the Weber & Quinn agreements the rights of the former Weber & Quinn employees under those agreements will be lost. That argument is clearly incorrect and was rejected by the Second Circuit.

Weber & Quinn was obligated under the Act to bargain with Local 553 about its decision to sell part of its business to Humble and the effect of such decision on the Weber & Quinn employees. *Weingarten Food Center of Tenn., Inc.*, 140 N. L. R. B. 256 (1962). During that bargaining, the contractual rights of the employees could and should have been discussed. Any differences with respect to the extent or nature of those rights could and should have been arbitrated with Weber & Quinn. Presumably those differences still can be so arbitrated.

In any arbitration proceeding between Local 553 and Humble, an award against Humble could result only in an order (i) to apply the various provisions of the Weber & Quinn agreements to the former Weber & Quinn employees, or (ii) to make a cash payment to such employees for rights under such agreements which were lost as a result of the sale by Weber & Quinn.

The former order, if obeyed, would necessarily cause Humble to violate its contract with the Association which, as a matter of law under the Act, covers those employees, and would foster unrest and dissatisfaction among the vast majority of Humble's employees.

The latter order would impose on Humble an obligation which it expressly disavowed in the purchase agreement with Weber & Quinn and which presumably was taken into account in fixing the consideration for the purchase. Such a result is unreasonable in view of the fact that Weber & Quinn, the party to the agreements, continued in existence beyond the date of the purchase and had assets from the purchase sufficient to pay such an award.

CONCLUSION

The Petition seeks review of a decision which is in harmony with the Act, the law established by this Court and the decisions in other circuits. It should be denied.

Respectfully submitted,

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May 27, 1966.